

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD J. SHANNON

Appeal No. 2006-1366
Application 09/487,944

ON BRIEF

Before FRANKFORT, OWENS and LEVY, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1, 3-8, 10 and 13-17, which are all of the pending claims.

THE INVENTION

The appellant claims a method and visual decision tree device for identifying protocols for wound treatment or prevention. Claims 1 and 10 are illustrative:

1. A method of identifying a wound care protocol for a given wound or wound prevention protocol appropriate for a given patient comprising:

classifying the wound or patient against a defined scale for a first wound factor, which is a defined wound assessment factor or defined wound risk assessment factor to obtain a wound classification;

grading the wound or patient against defined scales for one or more second wound factors, which are wound assessment factors or wound risk assessment factors; and

operating a mechanical visual decision tree device to show a decision or visual decision tree corresponding to the wound classification or to a scale for a wound assessment factor, wherein the visual decision tree device identifies at least one component of a treatment protocol for the graded wound factors.

10. A visual decision tree device for identifying a wound care protocol for a given wound or wound prevention protocol appropriate for a given patient comprising:

a mechanical device for identifying and displaying one of at least two decisions or visual decision trees based on one or more inputted wound factors according to a defined scale,

wherein the visual decision tree device identifies at least one component of a treatment protocol for the graded factors.

THE REFERENCES

Brill et al. (Brill) 5,299,121 Mar. 29, 1994
"Solutions Wound Care Algorithm Series" (Solutions) (E.R. Squibb
& Sons, June 1998).

THE REJECTION

Claims 1, 3-8, 10 and 13-17 stand rejected under 35 U.S.C.
§ 103 as being unpatentable over Brill in view of Solutions.

OPINION

We reverse the aforementioned rejection. We need to address only the independent claims, i.e., claims 1, 8, 10, 16 and 17. Claims 10 and 17 require a visual decision tree device which identifies at least one component of a treatment protocol for graded wound factors and comprises a mechanical device for identifying and displaying one of at least two decisions or visual decision trees based on one or more inputted wound factors.¹ Claims 1, 8 and 16 require a method for identifying a wound care protocol which comprises operating a mechanical visual decision tree device to show a decision or visual decision tree corresponding to a wound classification or to a scale for a wound

¹The examiner and the appellants should address whether there is adequate antecedent basis for "the graded wound factors" in claim 10 and "the graded wound risk assessment factors" in claim 17.

assessment factor, wherein the visual decision tree device identifies at least one component of a treatment protocol for graded wound factors.

Brill discloses "a system for use in pharmacies which uses customer inputs to assist the customer with the selection of an appropriate non-prescription medication to relieve symptoms of an illness, injury or the like" (col. 1, lines 6-9). "The system comprises a personal computer with a keyboard, monitor and disk drive as input/output devices with appropriate programming for prompting a user to input information which is used by a knowledgebase to determine non-prescription medications which may be purchased by the consumer to relieve symptoms of injuries or illnesses covered by the knowledgebase" (col. 2, lines 33-39).

Solutions discloses, for various nursing diagnoses such as impaired skin integrity, the corresponding assessments, nursing care goals, nursing action, and expected outcome.

Regarding the appellant's mechanical visual decision tree device, the examiner argues (answer, page 4):

The combination of Brill and Solutions teach computerized decisions techniques for presenting and classifying wounds. Manual devices such as sliding cards are well known and commonly used specifically prior to the computer era to present a visual decision. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention

Appeal No. 2006-1366
Application 09/487,944

to have included mechanical devices and sliding cards because such a modification would allow non-computer users to benefit from the use of the system.

Even if, as argued by the examiner, sliding cards were known, the examiner has not established that the applied references themselves would have fairly suggested, to one of ordinary skill in the art, the use of sliding cards to show a decision or visual decision tree corresponding to wound classification. The motivation relied upon by the examiner for doing so, i.e., to permit identifying a wound care protocol without the use of a computer, comes from the appellant's disclosure rather than coming from the applied prior art. Thus, the examiner used impermissible hindsight in rejecting the appellant's claims. See *W.L. Gore & Associates v Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); *In re Rothermel*, 276 F.2d 393, 396, 125 USPQ 328, 331 (CCPA 1960).

Appeal No. 2006-1366
Application 09/487,944

DECISION

The rejection of claims 1, 3-8, 10 and 13-17 under 35 U.S.C. § 103 over Brill in view of Solutions is reversed.

REVERSED

CHARLES E. FRANKFORT
Administrative Patent Judge

Terry J. Owens)
TERRY J. OWENS)
Administrative Patent Judge)


STUART S. LEVY
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

TJO/ki

Appeal No. 2006-1366
Application 09/487,944

Bristol-Myers Squibb Company
100 Headquarters Park Drive
Skillman, NJ 08558